

Competition Commission acceptance of undertakings No 1 of 2004

IN THE MATTER of a reference relating to the anticipated acquisition by Stena AB of certain assets operated by the Peninsular and Oriental Steam Navigation Company on the Irish Sea

Whereas a report of the Commission entitled *Stena AB and The Peninsular and Oriental Steam Navigation Company: a report on the proposed acquisition of certain assets relating to the supply of ferry services on the Irish Sea between Liverpool–Dublin and Fleetwood–Larne* (the report) was prepared and published under section 38 of the Enterprise Act 2002 (the Act) and was published on 5 February 2004:

And whereas the Commission concluded in its report that the proposed acquisition by Stena of the assets used on P&O's Liverpool–Dublin and Fleetwood–Larne routes would result in two or more enterprises ceasing to be distinct in accordance with section 26 of the Act:

And whereas the report contains the decision that there would be an anti-competitive outcome (as defined in section 35(2) of the Act) in relation to the proposed acquisition of P&O's Liverpool–Dublin Route by Stena:

And whereas Stena AB and Stena Line (UK) Limited have agreed to give undertakings to the Competition Commission for the purpose of preventing the anti-competitive outcome identified:

And whereas the Competition Commission—

- (a) gave notice of the proposed undertakings in accordance with Schedule 10 to the Act on 7 April 2004; and
- (b) did not receive any representations in accordance with the notice referred to in paragraph (a):

Now the Competition Commission pursuant to section 82(1) of the Act hereby accepts the undertakings, a copy of which is set out in the attached annex below, and accordingly the undertakings come into force in accordance with section 82(2) of the Act.

Signed by authority of the Competition Commission

(signed) PAUL GEROSKI
15 May 2004

Competition Commission undertaking No 1 of 2004

Undertakings given to the Competition Commission by Stena AB and Stena Line

Whereas a report of the Commission entitled *Stena AB and The Peninsular and Oriental Steam Navigation Company: a report on the proposed acquisition of certain assets relating to the supply of ferry services on the Irish Sea between Liverpool–Dublin and Fleetwood–Larne* (the report) was prepared and published under section 38 of the Enterprise Act 2002 (the Act) and was published on 5 February 2004:

And whereas the Commission concluded (and Stena and P&O accepted) that the proposed acquisition of the assets used on P&O's Liverpool–Dublin route by Stena would result in two or more enterprises ceasing to be distinct in accordance with section 26 of the Act:

And whereas the report contains the decision that there would be an anti-competitive outcome in relation to the proposed acquisition of P&O's Liverpool–Dublin route by Stena:

And whereas the Commission concluded that the action that should be taken for the purpose of preventing the substantial lessening of competition (SLC) was the prohibition of the transfer of the assets used on P&O's Liverpool–Dublin route from P&O to Stena:

Now Stena AB and Stena Line hereby give to the Commission the following undertakings under section 82 of the Act for the purpose of preventing the SLC concerned:

Prohibition of acquisition of P&O's Liverpool–Dublin route

1. Except with the prior written consent of the OFT, neither Stena AB nor Stena Line shall acquire control of all or any part of P&O's Liverpool–Dublin route such as would result in two or more enterprises ceasing to be distinct through the acquisition, directly or indirectly, of:
 - (i) any of the Liverpool–Dublin assets; or
 - (ii) any interest in any person carrying on or having control of all or any part of P&O's Liverpool–Dublin route.
2. Each of Stena AB and Stena Line:
 - (i) shall procure that none of its employees or directors holds any directorship or managerial position in any person carrying on or having control of all or any part of P&O's Liverpool–Dublin route from time to time, insofar as such directorship or managerial position would lead to either Stena AB or Stena Line acquiring control over such a person; and
 - (ii) shall not nominate any person to any such directorship or managerial position, insofar as such directorship or managerial position would lead to either Stena AB or Stena Line acquiring control over such a person, except with the prior written consent of the OFT.
3. Except with the prior written consent of the OFT, neither Stena AB nor Stena Line shall enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result, or will result, in any

associated person, directly or indirectly, doing any of the things listed in paragraphs 1 and 2 above.

4. For the avoidance of doubt, the prohibitions in paragraphs 1 to 3 above shall continue to apply regardless of who carries on, controls or has an interest in P&O's Liverpool–Dublin route at the relevant time.

Provision of Information

5. Each of Stena AB and Stena Line shall provide promptly to the Commission such information as the Commission may reasonably require for the purpose of performing any of its functions under sections 82, 83 and 94(7) of the Act.
6. Each of Stena AB and Stena Line shall provide promptly to the OFT such information as the OFT may reasonably require for the purpose of performing any of its functions under sections 92, 93(6) and 94(6) of the Act.

Compliance

7. Each of Stena AB and Stena Line shall comply with such written directions as the OFT or Commission may from time to time give to take such steps within their competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

Notice of asset acquisitions

8. In the event that Stena wishes to acquire any of the Liverpool–Dublin assets, Stena AB and Stena Line shall give notice to the OFT of the proposed purchase together with details of the asset or assets to be acquired, and shall provide further details of the proposed acquisition on the request of the OFT, and Stena AB and Stena Line shall ensure that the proposed acquisition is not completed for a period of [X] weeks after such notice is given.
9. If the OFT decides within the aforementioned [X]-week period that, in its view, the proposed acquisition may be expected to confer control of all or any part of P&O's Liverpool–Dublin route on Stena AB or any of its subsidiaries such as the OFT believes may be expected to give rise to the SLC identified by the Commission in the report, and communicates such a decision to Stena AB or Stena Line, Stena shall not go on to complete the proposed acquisition without first obtaining the consent of the OFT.

Obtaining control by stages

10. To the extent that any of the Liverpool–Dublin assets are acquired by Stena in the course of two or more transactions, the OFT, when considering the effect of a proposed acquisition of any of the Liverpool–Dublin assets for which notice is given in accordance with paragraph 8 (a 'proposed transaction') may treat any and all previous acquisitions of any of the Liverpool–Dublin assets ('previous transactions') which have occurred in the period of two years immediately prior to the proposed transaction as comprising part of the proposed transaction for the purpose of determining whether the proposed transaction may be expected to confer control of all or any part of P&O's Liverpool–Dublin Route on Stena AB or any of its subsidiaries.
11. For the avoidance of doubt, the OFT shall be entitled to take into account previous transactions in the manner described in paragraph 8 even if the OFT has given

consent to the previous transaction in accordance with paragraph 1 but not so as to prohibit retrospectively any transaction in respect of which it has previously given its consent.

Subsidiaries

12. Each of Stena AB and Stena Line shall procure that each of their respective subsidiaries from time to time complies with these undertakings as if such subsidiaries had given them.

Interpretation

13. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
14. In these undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word 'include' and its derivatives shall be construed accordingly.
15. For the purposes of these undertakings:

'the Act' means the Enterprise Act 2002;

'associated person' means a person or persons associated with Stena AB or Stena Line within the meaning of section 127(4) of the Act and includes any subsidiary of such a person or persons construed in accordance with section 129(1) of the Act;

'business' has the meaning given by section 129(1) of the Act;

'Commission' means the Competition Commission;

'control' shall be construed in accordance with section 26 of the Act, and includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise. In the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

'interest' includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose 'an interest in shares' includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to control the exercise of any such right;

'OFT' means the Office of Fair Trading;

'P&O' means The Peninsular and Oriental Steam Navigation Company and any of its subsidiaries from time to time and references to P&O in these undertakings shall be construed as a reference to The Peninsular and Oriental Steam Navigation Company and as a reference to each such subsidiary;

'the Liverpool–Dublin assets' means such assets as are in use from time to time to carry on all or any part of P&O's Liverpool–Dublin route, and include:

- (i) vessels;
- (ii) port leases and agreements;
- (iii) port buildings, plant and equipment; and
- (iv) computer equipment, software and customer information;

'P&O's Liverpool–Dublin route' means the business of supplying ferry services on the Irish Sea between the Port of Liverpool and Dublin Port carried on by P&O as at 5 February 2004;

'Stena' means Stena AB and any of its subsidiaries from time to time;

'Stena AB' means Stena AB publ (company registration number 556001-0802 (Sweden));

'Stena Line' means Stena Line (UK) Limited (company registration number 2454575); and

'subsidiary', unless otherwise stated, has the meaning given by section 736(1) of the Companies Act 1985.

FOR AND ON BEHALF OF Stena AB publ

signed Signature

signed Signature

Dan Sten Olsen..... Name

Svante Carsson Name

CEO Title

EVP and CFO Title

3 May 2004 Date

3 May 2004 Date

FOR AND ON BEHALF OF Stena Line (UK) Limited

signed Signature

signed Signature

Gunnar Blomdell Name

Jan C Olssen Name

Managing Director Title

CFO Title

3 May 2004 Date

3 May 2004 Date